

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHESTER CLASBY

v.

CIVIL ACTION NO. 03-12450-DPW

UNITED STATES OF AMERICA

MOTION FOR RECONSIDERATION

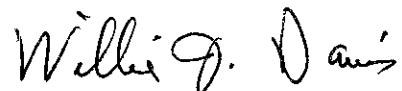
Now comes the petitioner in the above matter and moves that the court reconsider the order entered June 1, 2004, dismissing the case in light of the government's representation regarding the execution of petitioner's federal sentence.

According to the chronology presented by the government in its response, petitioner was not to commence serving his federal sentence until March 15, 2004. The petitioner does not agree. The federal sentence imposed on February 19, 1988 was five years on and after the sentence imposed in the Worcester Superior Court, which was fifteen to twenty years. However, after imposition of the federal sentence, the previous state court sentence was, in effect, eliminated. In any event, on the original state court sentence, petitioner was eligible for parole after serving ten years. Therefore, parole eligibility must be factored into any decision as to when the federal sentence commenced.

The fact that petitioner is not entitled to parole, as a liberty interest does not settle the question of whether or not denial of parole eligibility

can result in a denial of due process. See Ainsworth v. Risley, 244 F.3d 209 (1st Cir. 2001); Lerner v. Gill, 751 F.2d 450 (1st Cir. 1985); Breest v. Helgemore, 579 F.2d 95, 101 (1st Cir. 1978). See also Ohio Adult Parole Authority v. Woodward, 523 U.S. 272, 285-288 (1998); Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979). In the instant case, the petitioner asserts that because of parole eligibility, his federal sentence should have commenced in 1998; hence, the sentence has been served.

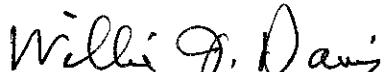
By his attorney,



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CERTIFICATE OF SERVICE

I hereby certify that notice of the filing of the within motion for reconsideration was served upon the government by mailing a copy thereof, postage prepaid, this 3rd day of June, 2004, to Timothy Q. Feeley, Assistant United States Attorney, United States Courthouse, One Courthouse Way, Boston, MA 02210.



WILLIE J. DAVIS